

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES D. DUES,

Plaintiff,

v.

Case Number 11-CV-11808
Honorable Thomas L. Ludington

CAPITAL ONE, NA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION
AND GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on the report and recommendation (ECF No. 11) issued by Magistrate Judge Charles E. Binder on August 8, 2011, on Defendant Capital One's motion to dismiss (ECF No. 5). Judge Binder recommends that the Court grant the motion to dismiss the complaint of Plaintiff James Dues, which asserts claims for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(e), and the Michigan Collection Practices Act, Mich. Comp. Laws § 445.252. Judge Binder recommends that the Court dismiss Plaintiff's claim for a violation of the Fair Debt Collection Practices Act because Defendant is not a "debt collector" as defined by the Act, 15 U.S.C. § 1692a(6), and Plaintiff is not a consumer as defined by the Act, 15 U.S.C. § 1692a(3). Judge Binder further recommends that the Court decline to exercise its supplemental jurisdiction over Plaintiff's remaining state law claim.

As of today's date, no party has filed any objections to Judge Binder's report and recommendation. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th

Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that Judge Binder's report and recommendation (ECF No. 11) is **ADOPTED**.

It is further **ORDERED** that Defendants' to dismiss (ECF No. 5) is **GRANTED**.

It is further **ORDERED** that Plaintiff's Fair Debt Collection Practices Act claim against Defendant is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that Plaintiff's Michigan Collection Practices Act claim against Defendant is **DISMISSED WITHOUT PREJUDICE**.

August 29, 2011

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 29, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS